IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1819 OF 2003

Vijay Anandrao Patil ...Petitioner
Vs.
The State of Maharashtra & Ors. ...Respondents

None for the Petitioner
Mr. P.S. Hingorani, A. P. P for Respondents 1 to 9

CORAM: SHRI R.M.S. KHANDEPARKAR &
SMT.ROSHAN DALVI, JJ.
DATED: 27TH JULY, 2007

P.C.

1. None present for the Petitioner. Mr. Hingorani, A. P. P present for Respondents 1 to 9.

2. Heard the learned A. P. P. Perused the Petition and annexures thereto.

3. In the present Petition the Petitioner is seeking relief in the nature of compensation to the tune of Rs.50 Crores or any other appropriate amount for the alleged custodial torture of the Petitioner and alleged false implication of the Petitioner in the criminal cases by the Respondents.

4. The grievance of the Petitioner is that on 28th January, 1990 Petitioner's brother by name Balasaheb was murdered by Babasaheb Bhimsen Patil, Mansingh Bhimsen Patil, Sanjay Bhimsen Patil, Jagannath Tanaji Shinde, Gajanan Shelke, Anandrao Shinde, Mahadev Shinde, Vasant Kulkarni and Vikas Shinde. The villagers of the Petitioner's village state that in the process of murder of Balasaheb Patil, the Petitioner and his family members were also assaulted by the said persons. Inspite of filing several complaints, there was hesitation on the part of the Police authorities to take appropriate action. However, after pursuation of the matter with the higher authorities, the case was transfered to C.I.D and after completion of the investigation the charge-sheet came to be filed and accused were convicted under Section 302 of the Indian Penal Code in the year 1992. The said accused filed appeal before this Court and during the pendency of Appeal they were released on bail.

5. It is the case of the Petitioner that while on bail the accused persons misused their liberty and they fired bullets towards the house of the Petitioner and threatened the Petitioner for settling the matter outside the Court. As the Petitioner did not succumb to their pressure, the complaints came to be filed against the Petitioner and in the process the

Petitioner was arrested and remanded to the Police custody and was detained in jail on 2nd July, 2002. It is the contention of the Petitioner that he was falsely implicated by the Respondents in several cases and while in custody he was subjected to custodial torture, which has caused immense physical and mental agony to the Petitioner by the Respondent and he has been rendered incapable of doing agricultural work and he has incurred financial losses and, therefore, he should be awarded compensation as prayed for.

6. On the other hand, it is the case of the Respondents that the complaints against the Petitioner disclosed cognizable offences. The Respondents investigated in the matter and in the course of investigation and for the purpose of investigation the Petitioner was arrested and was remanded to the custody. The Respondents have denied the allegations of torture to the Petitioner. It is their contention that at no point of time the Petitioner had made any complaint to the learned Magistrate regarding alleged torture whenever the Petitioner was produced for remand in the matter. They have also stated in their affidavit that consequent to the arrest, the Petitioner was referred to the hospital and medical examination revealed that the Petitioner was not subjected to any custodial torture. According to Respondents there is absolutely no case made out for paying any

compensation.

7. It is their further contention that the Petitioner suffered some minor injuries to his legs as he was trying to escape while was being arrested and these facts were clearly mentioned in the arrest panchanama.

8. It is further case of the Respondents that the Petitioner earlier had filed Criminal Writ Petition No.16 of 2003 which came to be rejected on 4th June, 2003 with a specific observation that the Petitioner is at liberty to approach the appropriate Court for damages if he so desires. It is their contention that Writ Court is not an appropriate Forum to claim compensation as in such cases matters involve disputed questions of facts and the same requires proper evidence to be adduced and adjudicated upon.

9. Undoubtedly the present Petition is for compensation on the ground of custodial torture alleged to have been suffered by the Petitioner while he was in custody, consequent to the arrest of the Petitioner for investigation in relation to the cognizable offence which was alleged to have been committed by the Petitioner. It apparently discloses that the Petitioner had filed Criminal Writ Petition No.16 of 2003. It is also apparent that in the said writ petition also the Petitioner had

claimed damages on the ground of alleged custodial torture. Prayer clause (c) of Writ Petition No.16 of 2003 reads thus :

> *"(c) this Hon'ble Court may call for the medical papers of the Petitioner from Civil Hospital, Sangli and punish the police official responsible for the custodial torture of the Petitioner and grant compensation to the Petitioner."*

The order dated 4th June, 2003 which was passed by this Court in the said Writ Petition clearly recorded thus :-

> *" The Petitioner shall be at liberty to approach appropriate court for damages."*

10. Apparently having considered the plea regarding the claim for compensation on the ground of custodial torture, this Court had left it open to the Petitioner to approach the appropriate Court in relation to the said claim, meaning thereby the Petitioner was left at liberty to approach the Civil Court for the necessary relief on the ground of alleged custodial torture, the same having been refused to be entertained by this Court. There being an alternative efficacious remedy available to the Petitioner in that regard and a clear order in that regard having been passed on 4th

June, 2003 in Criminal Writ Petition No.16 of 2003, it is not open for the Petitioner to raise the same issue by filing a fresh Petition. On this ground itself, the Petition is liable to be dismissed in lemini.

11. Even otherwise perusal of the Petition discloses allegations of custodial torture by the Police Officers who have been named in the Petition. However, the Petitioner has not joined those Police Officers as the parties to the Petition. If any order is passed in relation to the allegations of custodial torture to the Petitioner by any of those Police Officers it could result in a clear injustice to such Police Officers.

12. Records also disclose that the allegations of custodial tortures relate to the Petitioner who was in custody in relation to the investigation of the cognizable offence and pursuant to the order, the learned Magistrate had remanded the Petitioner in custody. Obviously, therefore, it is necessary to find out whether the acts performed by the Police Officers named in the Petition were in the course of discharge of their official duties assigned to them or in excess of their duties, and for that purpose, it would be necessary to hear those Police Officers and also to adjudicate upon the disputed questions of facts in that regard, which is

beyond the scope of writ jurisdiction.

13. For the reasons stated above, therefore, there is no case made out for any compensation to the Petitioner in the facts and circumstances of the case. This however will not preclude the Petitioner to approach appropriate Court, if he so desires and the law permits.

14. Rule stands discharged. There shall be no order as to costs.

(SMT. ROSHAN DALVI, J.) **(R.M.S. KHANDEPARKAR, J.)**